Annual Survey of Massachusetts Law

Volume 1961 Article 11

1-1-1961

Chapter 8: Conflict of Laws

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CHAPTER 8

Conflict of Laws

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§8.1. Applicability of state or federal law: Commercial paper of the United States: Standards and burden of proof. In *Elbar Realty, Inc. v. City Bank & Trust Co.*[1] in which Massachusetts was the forum of an action between private parties and in which Massachusetts law otherwise governed the case, the Massachusetts Supreme Judicial Court held that Massachusetts rules were controlling with respect to standards and burden of proof applicable to the trial and adjudication of issues as to status, quality of title, and rights inter se of such parties in relation to a United States Treasury Certificate of Indebtedness.

A United States Treasury Certificate of Indebtedness was stolen from the plaintiff. A third person pledged this paper as collateral for a loan from the defendant. The defendant, resorting to this collateral, sent it to the First National Bank of Boston for collection, and First National sent it to the Federal Reserve Bank for redemption. The plaintiff brought an action of tort for conversion against the defendant, which pleaded in defense that it was a holder in due course. On denial of its motion for a directed verdict, the defendant went up on a bill of exceptions including the contention that, because the case dealt with a negotiable instrument issued by the United States, federal and not state law was applicable with respect to standards and burden of proof in determination of the issue as to holder in due course.

The Court held that the case was to be determined in accordance with standards and burden of proof as prescribed by the law of Massachusetts. This aspect of the *Elbar* decision was highly predictable and amply supported by precedent and good sense. In litigation relating to United States commercial paper, the doctrine of *Erie R. Co. v. Tompkins*[2] is not decisive. The general rule as to whether state or federal law will apply is derived mainly from two cases, *Clearfield Trust Co. v. United States*[3] and *Bank of America National Trust & Savings Assn. v. Parnell.*[4] This rule is that when the United States

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§8.1. 1 342 Mass. 262, 173 N.E.2d 256 (1961).
2 304 U.S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 (1938).
3 318 U.S. 363, 63 Sup. Ct. 573, 87 L. Ed. 838 (1943).
4 352 U.S. 29, 77 Sup. Ct. 119, 1 L. Ed. 2d 93 (1956).

Government is itself a party, or when although not a party a "federal interest" is involved, then federal law governs; but when there is no such "federal interest" and the case comprises only private parties, state law governs.

In the *Clearfield* case the United States brought suit on the Clearfield Bank's guaranty of prior endorsements, when that bank had cashed a Government check on the forged endorsement of the payee and had collected the amount of the check from the United States. The Supreme Court of the United States held that the case was to be governed by federal law and not by state law. The Court said:

> When the United States disburses its funds or pays its debts, it is exercising a constitutional function or power. This check was issued for services performed under the Federal Emergency Relief Act of [April 8] 1935, 49 Stat. 115, c. 48. The authority to issue the check had its origin in the Constitution and the statutes of the United States and was in no way dependent on the laws of Pennsylvania or of any other state. . . . The duties imposed upon the United States and the rights acquired by it as a result of the issuance find their roots in the same federal sources.[5]

The Court added another reason: "The application of state law even without the conflict of laws rules of the forum would subject the rights and duties of the United States to exceptional uncertainty. It would lead to great diversity of result."

In *National Metropolitan Bank v. United States,*[6] a suit by the United States against the presenting bank, which had cashed Government checks on the forged endorsement of the payee on that bank's guaranty of prior endorsements, the United States Supreme Court held that federal and not state law applied to the defenses of the bank. These defenses were: (1) that the endorsement did not amount to a guaranty of the payee's signature, (2) that issuance of checks by the Government was a warranty that they were not fictitious and this warranty was breached, and (3) that the Government's disbursing agencies neglected properly to supervise and examine the transactions both before and after the first and succeeding checks were issued, thereby delaying discovery of the fraud, and this neglect, not the bank's guaranty, caused the Government's loss. With little discussion of the conflicts question, the Supreme Court applied the *Clearfield* rule.

In *Bank of America National Trust & Savings Assn. v. Parnell,*[7] the United States Supreme Court applied state law to questions of standards and burden of proof of good faith. However, the question of "overdueness" of the bonds was determined by federal law, the Court saying of this point that "Federal law of course governs the interpreta-

[5] 318 U.S. 363, 366, 63 Sup. Ct. 573, 575, 87 L. Ed. 838, 841 (1943). See also Miskin, The Variousness of Federal Law, 105 U. of Pa. L. Rev. 797, 824, 828 (1957); Note, 64 Harv. L. Rev. 342 (1950).

[6] 323 U.S. 454, 65 Sup. Ct. 354, 89 L. Ed. 383 (1945).

[7] 352 U.S. 29, 77 Sup. Ct. 119, 1 L. Ed. 2d 93 (1956).

tion of the nature of the rights and obligations created by the bonds themselves." The Court did not find a sufficient federal interest in this suit between private persons in the possibility that "the floating of securities of the United States might somehow or other be adversely affected by the local rule of a particular state regarding the liability of a converter. This is far too speculative, far too remote a possibility to justify the application of Federal law to transactions essentially of local concern."

In *Gramatan National Bank & Trust Co. v. Moody*[8] (cited along with the *Parnell* case by Mr. Justice Cutter in the *Elbar* case), the plaintiff bank sought to recover on a negotiable note insured under the National Housing Act.[9] The defendants were husband and wife who had contracted to have their home insulated by Keystone Home Insulation. Keystone, for value, endorsed the note to the plaintiff. When the defendants argued that the plaintiff was not a holder in due course, the Supreme Judicial Court said: ". . . the case apparently was tried below and has been argued in this court on the assumption that the rights of the parties are to be governed by the law of this Commonwealth. We shall deal with the case accordingly." In a footnote, the Court remarked that "It has generally been held that questions arising from notes given in conjunction with loans insured under the National Housing Act are to be determined by state law." [10]

§8.2. Testamentary trust of movables: Construction of "heirs at law." *Second Bank-State Street Trust Co. v. Weston*[1] represents an unexceptionable application by the Massachusetts Supreme Judicial Court of the established conflicts rule that, absent manifestation of intention that another law shall control, the law of the testator's domicile supplies the rules of construction of a testamentary trust of movables, even though the foreign forum has chosen its own law as governing matters of trust administration, the fiduciaries being of the forum and it being otherwise clearly intended that the forum would be the locus of administration of the trust.[2]

Here the testatrix, widow of an inhabitant of Massachusetts, died in 1911 domiciled in Maryland. She was described in the will as of Baltimore. The will was probated in Maryland, and ancillary administra-

8 326 Mass. 367, 94 N.E.2d 771 (1950).

9 12 U.S.C. §§1702 et seq. (1946), as applicable at the time the case was decided.

10 326 Mass. 367, 370 n.1, 94 N.E.2d 771, 772 n.1 (1950), citing United States v. Dobbins, 139 F.2d 169 (5th Cir. 1943); United States v. Novsam Realty Corp., 125 F.2d 456 (2d Cir. 1942); United States v. Hansett, 120 F.2d 121 (2d Cir. 1941).

§8.2. 1 1961 Mass. Adv. Sh. 883, 174 N.E.2d 763, also noted in its trust aspects in §2.8 *supra*.

2 Cf. Restatement of Conflict of Laws, Second, §§295, 299, 308 (Tent. Draft No. 5, April 24, 1959). Beale, Conflict of Laws §251.2 (1935), states: "As the rule is usually stated, without nice qualifications, the interpretation of a will is in accordance with the laws of the testator's domicil, even though the will was made elsewhere." Section 308.1 states: "The courts, not distinguishing too meticulously between usage and law, lay down the rule that, nothing calling for a contrary view, language in the will is to be interpreted according to the domicil of the testator."

tion was obtained in Massachusetts. The residue of her estate went to a Massachusetts trustee, and the trust was for many years administered by Massachusetts trustees appointed by and subject to the jurisdiction of the Massachusetts Probate Court. After the termination of the trust in 1958 the petitioner, a Massachusetts corporate fiduciary, as sole remaining trustee petitioned for instructions with respect to disposition of the trust fund. At issue was the composition of the class of remaindermen denoted by the phrase "heirs at law." Under Massachusetts precedent heirs at law would in this context be construed to mean those who were heirs at law at the time of the testatrix' death in 1911. Under Maryland law, as subsequently determined by the Massachusetts Supreme Judicial Court, heirs at law would be determined as of the termination of the trust in 1958.

The Probate Court decreed the heirs at law to be those at the death of the testatrix. On appeal prosecuted by persons qualifying as "heirs at law" at the termination of the trust, the Supreme Judicial Court reversed, deciding that Maryland law controlled and construing Maryland case law as requiring that the heirs at law be determined as of the date of termination of the trust.

The following is a summary of cases cited by the Court as tending to support the choice of law rule applied in the *Weston* case. In *McCurdy v. McCallum*,[3] the testatrix being domiciled and her will proved in Nova Scotia, the construction, meaning, and legal effect of a clause of the will were determined under Nova Scotia laws. The trustees and executors were also Nova Scotians. The question was whether a "request" was mandatory or merely precatory or permissive, so that the legatee took $2000 absolutely rather than as a trustee.

Brandeis v. Atkins[4] arose out of an agreement of compromise between Massachusetts residents, approved by the Supreme Judicial Court in regard to property located in Massachusetts, creating a trust for a term of years, which provided that if the beneficiary died before the term ended (as in fact she did), the sum was to be paid to her heirs at law. The Court said "heirs at law" were to be determined by Massachusetts law and not by New York law, where the beneficiary died domiciled. The Court said that "ordinarily when a contract is made and to be performed in the same jurisdiction the law of the place governs the construction of its language and the rights of the parties under it." Obviously, this decision is at best peripheral to the issue presented by the *Weston* case.

In *Phelps v. Matoon*,[5] the question whether language created a testamentary trust was determined by the law of Vermont, where the testator died domiciled. He "may freely be assumed to have relied upon the law of that state for the rules to be applied in the interpretation of his testamentary words." In that case the will was allowed in the probate court in Vermont. The estate contained real and personal prop-

3 186 Mass. 464, 468, 72 N.E. 75, 76 (1904).
4 204 Mass. 471, 474-476, 90 N.E. 861, 862 (1910).
5 310 Mass. 97, 99-100, 37 N.E.2d 127, 129 (1941).

erty, some of the real property apparently being located in Illinois.

In *New England Trust Co. v. Wood,*[6] a will was drawn and executed in Turkey by a testator who had spent most of his life in Turkey but who died a Massachusetts domiciliary. The Court held Massachusetts law to be applicable in determining the class of appointees intended under the testamentary power of appointment to his "heir or heirs," conferred upon his wife. The validity of the exercise of this power by his wife was held to be determinable by Massachusetts law, since the testator died domiciled in Massachusetts and the testamentary trust of the property subject to the power had its situs in Massachusetts. However, as to his wife's will, executed in Greece by her, a citizen and resident of Greece, who died domiciled in Greece, it was noted that Greek law governed validity of execution and construction of the words "heirs" and "usufruct."

[6] 326 Mass. 239, 242-243, 93 N.E.2d 547, 549 (1950).